1951. File No. S. Bijapur 3/57

K

Legal DEPARTMENT

Examined E BRANCH

Subject:—

Suits Bijapur

In the Court of the Civil Judge (S.D.) Bijapur
Civil Suit no. 967 of 1950

Mallapa Basappa Halkari — — Pltff.

Vs

The State of Bombay — — Defts.

Re: For declaration that the requisition order of the Collector, Bijapur, dated the 7th February 1950 is void, ultra vires and inoperative and for injunction directing the Government to forego requisition and restore the property to the plaintiff.

Civil Appeal No. 456 of 1957.

P. H. H.
(F-K)

File No. S. Bijapur 3/57

Std. Secty./Slip 24-B

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Legal Department File No. S. Bij. 3/51

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Suits Bijapur.

C.S.No. 967 of 1950.

M. B. Halkati

V/s

The State of Bombay

For declaration that the requisition order is void, ultra vires and inoperative and for injunction.

1-72

Civil Suit No. 967 of 1950.
In the Court of Civil Judge, Sr. Dn.,
At Bijapur.

1. Mallappa Basappa Halkatti,
Lingayat, age 40, occupation
trader and agriculture, residence
Bagalkot, District Bijapur ----Plaintiff.
Vs.

1. The State of Bombay. -------- Defendant.

Claim Rs. 205/-

Do. for jurisdiction Rs. 205/-.

Herein the above-mentioned plaintiff begs to submit as follows:-

(1). The plaintiff is the owner and occupant of his bungalow situated in C.T.S.T.P.210 at Bagalkot w all its compound and garden on the Bagalkot-Kal road. Since the time of its construction i.e. f over 10 years, the plaintiff and his family hav been using the same for the/ir residential purp The plaintiff has constructed this bungalow at great cost for the use and occupation of hiself and his family. His family consists of about 15 members and have been residing in it. The plaint ff and his family have been advised by their family doctors and other doctors to reside alwa in open air i.e. in the above-mentioned bungalow The residence of this bungalow is necessary for plaintiff and his family to keep them in good health.

(2). The Collector of Bijapur, purporting to act under section 5 (1) of the Bombay Land Requisition Act XXXIII of 1948, issued an order on 7-2-1950, requisitioning the aforesaid bungalow for the office of the Assistant Collector, Bagalkot Division and for his residence. The plaint ff and his family members had been residing in this bungalow continuously for a period of more than six monhhs prior to 7-2-1950; but the Collector, without making proper enquiries and relying on the one-sided report of his inferior officer passed the order though he had no authority to do so.

(3). When the order of the Collector of Bijapur was served on the plaintiff, it was a great surprise to him as his previous application made to him in the month of September 1949 stating th he has been personally occupying it had not been considered at all. The Collector did not inquire into the matter as required by law and so his order is illegal, void, ultra-vires and inoperati -ive and cannot be enforced against the Plaintiff Though the plaintiff protested against the order to the Collector and also to the Hon'ble Minister it was of no avail. The possession of the bungal was taken over from the plaintiff on 1-3-1950 in pursuance of the said order and the plaintiff gave it under protest and under threat of police force. Though possession was taken on 1-3-1950, it has not been used for a long time for the purpose for which it was requisitionod.

(4) The provisions of the Bombay Land Requisition Act are ultra vires of the Constitution of India and the State of Bombay had no jurisdiction to pass such a law violating the Fundamental rights of the citizens of Bharat guaranteed by the Constitution. The provisions directly abrogate and curtail the rights of the citizens to hold his property as he likes a right guaranteed by section 19 of the Indian Constitution. They are void under section 13 of the constitution, to the extent of their being inconsistent with any of the provisions of part III of the Constitution. The aforesaid requisition order of the Collector, therefore, is ultra-vires and void and cannot be enforced against the plaintiff. The Collector cannot take any legal and valid action under it and the action now taken by him is ultra-vires. The defendant and its officer cannot retain possession of the Bungalow on the strength of this order, which is illegal and ultra vires on gounds mentioned in this para and also in paras Nos. 2 and 3 above.

(5) The defendant and its Officers were requested to withdraw the said order and restore the property to the plaintiff with which they did not comply. So, plaintiff gave the defendant notice under section 80 of the Civil Procedure Code, to restore the Bungalow in the same condition in which it had been taken from him on 31-3-1950. But as no reply has been received from the defendant, the plaintiff has filed this suit.

(6). The cause of action arose on 1-3-1950, on the day on which possession under protest was taken from the plaintiff by the servants of the defendant.

(7). Valuation:-

(a). Declaration that the order of the Collector of Bijapur (R.Q.N.-11 dated 7-2-1950) against the plaintiff is ultra vires and void: Rs. 200-0-0.

(b) Permanent injunction against the defendant restraining the defendant and its officers directing it to release the suit property from requisition and restore it to the plaintiff in the same condition in which it was taken from them on 1-3-1950. --------Rs. 5-0-0.

Hence Court fee on Rs.205-0-0 has been paid. The valuation for jurisdiction and pleader's fees is the same.

(8) This being a suit against the Bombay State, it falls within the special jurisdiction of this Court and hence this Court has jurisdiction to try it.

(9) The extract of the Property Register and the copy of the notice given under section 80 of the C.P.Code have been produced herewith.

(10) Plaintiff prays:-

(1) It should be declared that the Requisition Order of the Collector R.Q.No. 11 dated 7-2-1950 is void, ultra-vires and inoperative for reasons shown in paras 2 to 4 of the plaint.

(2) An injunction be issued against the defendant and its officers directing it to release the suit property from requisition and restore it to the plaintiff in the same condition in which it was taken from him, on 1-3-1950.

(3) Costs of the suit and any other incodental relief which the Court deems fit may be awarded to the plaintiff.

to the plaintiff.

Dated: 16-11-1950.

Sd/- Mallappa Basappa Halkatti.

Plaintiff.

I, Mallappa Basappa Halkatti, Lingayat, age 40, trader and agriculturist of Bagalkot, hereby verify that the contents of paras 1 to 10 of the plaint are true to my knowledge and belief.

Dated:16-11-1950.

Sd/- Mallappa Basappa Halkatti,

Plaintiff.

Filed in Court on 21-11-1950.

Sd/- x x x
Pleader for the plaintiff.

Information under Rule 113 of Law Officers Rules.

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1. The No. of suit.	Civil suit No. 967 of 1950 on 21-11-50.
2.	
3. The date on which and the court in which it was instituted.	In the court of the Civil Judge Sr. Dn. Bijapur.
3. The names of the parties.	1. Shri Mallappa Basappa Halkatti of Bagalkot. V.S. 1. The State of Bombay.
4. The amount or value of the claim.	Rs. 205/-.
5. The date fixed by the court for the first hearing.	11- 1-1951.
6. Whether the notice of action has been given under Sec. 80 of the Civil Procedure code, and if so the date of delivery of such notice.	Yes. Notice as required by Sec. 80 C.P.C. has been given to the Collector on 1-4-50.
II. The following papers shall be sent along with the report.	
(a) A copy of the plaint in regional language together with copies of any documents or lists of documents annexed to the plaint. (b) Translation of the same in English typed in half margin the more important of the statements therein being marked with letters. (a) and (b), etc. and notes being added in the margin stating whether such statements are correct or not or if not in what respect they inaccurate(when a requisite explandation cannot be thus compressed reference should be made to the pragraphs of the accompanying statement in which the matter should be fully discussed of the circumstances which led to the suit.	The plaintiff has given the plaint in English. No documents are attached to the plaint. 1. No remarks. 2. It is not correct to say that the plaintiff was residing in the bungalow for a period of more than six months prior to 7-2-50. Due enquiry was made as required by sub section 2 of Sec. 5 of the B.L.R. Act and as the plaintiff or his tenant had not resided there in for a continuous period of six months immediately preceeding the date of the order, so the bunglow was requisitioned. The petition of Plaintiff to Government to set aside the Collector's order has been rejected by Government under their order No. R.D./acco dated 23-2-50.
(c) A full and detailed statement (i) of the circumstances which led to the suit.	The plaintiff's request to release the bungalow from requisition having been rejected, the plaintiff has instituted the suit to get possession of the bungalow
ii) Of the course which it is proposed to adopt, namey whether to admit, compromise or defend the suit and of the reasons for the same, and.	It is proposed to defend the suit on the ground that the order of requisition passed by the collector on 7-2-50 after due enquiry is valid. From the papers it is clear that the plaintiff had not -- actually resided in the bungalow for a continuous period of six months immediatel preceeding the date of the order. A -- declaration as required by sub.Sec. 2. of Sec. 5 of the Act has been given after due enquiry and this is a conclusive evidence under Sec. 2 of the Act. The Collector, during his camp at Bagalkot on 5th 6th and 7th February 1950 satisfied himself after personal enquiry, that the building had not been occupied by the Plaintiff continuously for a period of six months. The plaintiff himself expressed his willingness before the Prant Officer, on 12-9-49 to let the bungalow o reasonable rent fixed by the Executive Engineer,Three days later he went back on his statement and put in an applicatio saying that he had given his consent in haste. From this it is clear that he w

.....

apprehensive that the rent for the building if fixed by the Executive Engineer would be far below his expectation. The reason that he required the bungalow for his personal use was simply an excuse to avoid the building being taken over by Government.

It has also transpired in the enquiry that the plaintiff was himself residing in another house in the town. Enquiry also showed that the plaintiff had tried to resort to tactics in order to frustrate attempts to requisition the building by lodging a couple of students in a portion of the building for a short while, allowing touring officers to stay in the bungalow during damp. He did this just to put up a show that the building was occupied.

(d) If the case turns on documentory evidence, copies of the documents (or the originals) relied on by the plaintiff and by the defence;

The papers are enclosed.(File No.I.)

(e) All the correspondence and written proceedings whether in English or in any regional language connected with the subject matter of the suit together with translation in English of all important papers which are in the regional language.

All the important documents are translated in English.

(f) A statement in English containing a brief description of all the documents referred to in clause (d) & (e) above which are in the regional language.

Statement enclosed.

Original by PP

For Collector, Bijapur.

7 -9

Bijapur C.S.No.967/1950.

1. This is a suit for declaration that the requisition order of the Collector, Bijapur, dated 7-2-1950 is void, ultra vires and inoperative and for injunction.

2. The suit is defensible.

3. The Defence of the same may be sanctioned on the lines of the accompanying brief.

PMG
4/6

Solicitor (Mk) Valuation for court fees of Rs 5 has been seen to be wrong. Nothing may be raised. Advocate may be referred to whether it can be held that an order appointing an administrator can be challenged in a civil court. If should be held in 1948 A. Provincial Legislature had the power to pass such an act.

THE SECRETARIAT GOVERNMENT
LEGAL DEPARTMENT
File No. 12805
Sub No. 11-6-51
Branch E.

Secy. R.D. 8/6

L. D.
9 JUN 1951

GVR 8/6/51

REVENUE DEPARTMENT
SECRETARIAT, BOMBAY.
08 JUN 1951

PMG
4-6-51

Subs
New grounds of defence, as directed, have been added as grounds 4(

PMG
6/6
Solicitor (M&D) approved as corrected 6/6

X No. 9018 seen AK 9/6
dt 8-6-51

No. 478 of 1951.
Date:- 2-7-1951

To

The Remembrancer of Legal Affairs,
Secretariat, Bombay.

Subject:- Bijapur Civil Suit No.967 of 1950.
1. Mallappa Halkatti. plff.
Vs.
1. The State of Bombay. deft.

Sir,

With reference to your memorandum No. 9343 of 14-6-1951 I have the honour to state that I have prepared a written statement to the suit and the same is sent herewith for favour of revision.

2. In the Times of India dated 23-6-1951 at page 5, it is stated that the Bombay High Court has held that the Bombay Land Requisition Act, 1948 is ~~declared to be~~ void ~~and to be of no effect~~. I have not got full text of the judgment. I therefore submit that the written-statement now submitted herewith requires to be revised in view of this latest decision of our High Court.

High-Court.

(3). The papers in two files received from you, and the written-statement prepared by me are submitted to you herewith. The suit is fixed for putting in written-statement on 9-7-1951 and therefore I request you to send me revised writtenstatement and the two files before that date if it can conveniently be done so.

Yours faithfully

Ahmad

District Government Pleader, Bijapur.

L.d.

Please see the letter from the D.G.P forwarding draft W.S in civil suit no 969/50
In para 2 of his letter the D.G.P requests that in view of the recent decision of the Bombay High Court the draft may require drastic amendment. However, we may be informed that the question of the vires of the Bombay Reorganisation is pending in appeal. So the draft sent by him may be approved.

The suit comes for hearing in August 1951 (Two Months Time)

The D.J.P. has submitted a draft
the W.S. for approval in this case.
The draft covers the point under
reference & may be approved.

14-7.

Sol. (Mor.) Bhg.
16-7-51

In the Court of Civil Judge, Senior Division, Bijapur.

At Bijapur.

13

Regular Civil Suit No.967 of 1950.

1. Mallappa Basappa Halkatti of Bagalkot. plff.

Vs.

1. The State of Bombay. deft.

Herein the defendant by his written-statement states as follows:-

1. The Head Quarters of Sub Divisional ~~Magixxx~~ Officer Bagalkot Division, was to be shifted to Bagalkot. There was no Government building for this office. The plaintiff in his statement before the Prant Officer was prepared to let out the suit premises to Government. The building was to be requisitioned and due inquiries as provided for by section 5(2) of the Land Requisition Act were made. In the opinion of the Collector of Bijapur acting under section 5 of Bombay Act No.XXXIII of 1948 read with Government Notificatio H and L.G.D.No.841/4503 of 9-6-1948 it was necessary to requisition the premises wherein the owner or landlord or tenant had not actually resided for a continuous period of six months immediately preceding the date of the order in question and accordingly he made an order in writing requisitioning the premises for the purpose mentioned therein After due inquiry he also made a declaration in the order of requisition that the owner landlord or tenant has not actually resided therein for a continuous period of 6 months immediately preceding the date of the order. The requisition order was passed under No.R.Q.N. 11 of 7-2-50 as amended by that of 17-2-1950.

(2). The defendant does not admit plaintiff's allegation in para 1 of the plaint to the effect that the plaintiff and his family have been using the premises for over 10 years for their residential purposes, that the plaintiff and his family have been advised to reside always in open air in the suit building and that the residence of this Bangalow is

necessary for the plaintiff and his family to keep them in good health. These allegations are not correct and are denied.

(3). The allegations of the plaintiff in Para 2 of the plaint that the plaintiff and his family members had been residing in this bangalow continuously for a period of more than six months prior to 7-2-1950 and that the Collector without making proper inquiries and relying on the onesided report of his ~~inferior~~ officer passed the order without any authority to do so. These allegations are not correct and are denied.

(4). The allegations in Para 3 of the plaint " When the order of the Collector ..... against the plaintiff" are not correct and are denied. The allegations in that para that possession was given under the threat of Police ~~Police~~ force and that the building has not been used for the purpose for which it was requisitioned are not correct and are denied.

(5). A declaration ~~of~~ after requisite inquiries as stated in para 1 above has been made and it is conclusive evidence that the owner, landlord or tenant has not resided as stated in the declaration. In view of section 5(2) of the said Act, the plaintiff cannot raise a contention that he was residing therein as pleaded by him. He is also estopped from raising such a contention.

(6). The allegations in para 4 of the plaint are not correct and are denied. The provisions of the Bombay Land Requisition Act are not ultra vires or void. The enactment is not made without jurisdiction and the enactment is valid. The order of the Collector is not ultra vires or void or illegal.

(7). The order in question was made and the action was taken in good faith. The requisition of the Premises was made for a Public as well as State purpose after sufficient

inquiry. The order is legal and valid and the plaintiff's suit is barred under section 17 of the Bombay Land Regisition Act 1948.

(8). The requisition order in question is an administrative order and the plaintiff cannot challenge it by a suit.

(9). The plaintiff seeks in this suit restoration of possession of the suit property and therefore valuation for purposes of court fee and jurisdiction is the market price of the suit property.Unless the plaintiff corrects the value and pays the court fee the plaintiff's suit ought to be dismissed.

(10. This defendant denies the plaintiff's claim in toto.

The defendant submits that plaintiff's suit be dismissed with costs.

District Government Pleader,Bijapur.

I, A.C.Angadi, B.A.LL.B., District Government Pleader,Bijapur, do hereby declare that what is stated in Paras 1 to 10 above is true on information received and believed to be true.Dated this day of the month of in the year 1951.

District Government Pleader,Bijapur.

17

No. 11431

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 19th July 1951.

Subject :- Civil Suit No. 967 of 50

Memorandum:

With reference to his letter No. 478 dated the 2-7-51 forwarding a draft written statement in the suit noted above for approval, the District Government Pleader, Bijapur is informed that two copies of the ~~revised~~ approved draft are forwarded herewith. The District Govt pleader is also informed that no revision in W.S. is necessary as the case referred to ~~by~~ in the letter is now in appeal before the Division Bench of the Bombay High Court.

The papers in two files are herewith returned.

For Remembrancer of Legal Affairs.

To

The District Government Pleader, Bijapur.

HSP/4/7

Submitted
Orig
18/7

Solicitor (Mrd)
18/7

Issued
19/7

No. 558 of 1951. 19
Date:- 19-7-51

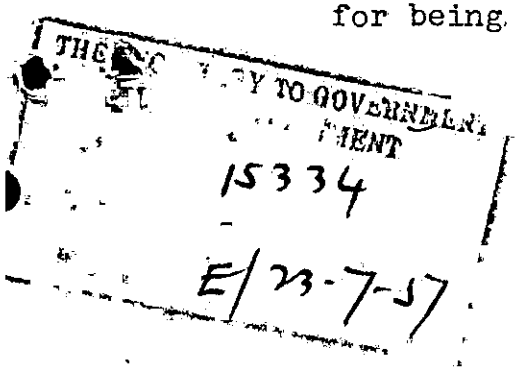
To

The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur C.S.No.967 of 1950.
1. Mallappa Halkati. plff.
Vs.
1. The State of Bombay.deft.

Sir,

The above suit was fixed on 9-7-1951 for putting inwwritten-statement.I applied for tmme and the suit now stands adjourned to 9-8-1951 for puttin in Written-statement I request you to forward to me the revised written-statement for being put in in Court.



Yours faithfully

Ahmad

District Govt.Pleader,Bijapur.

L 2
The draft W.S. is approved dispatches
Nothing is to be done
2619 A Solicitor 26-7

No. 670 of 1951.
Date:- 30-8-51

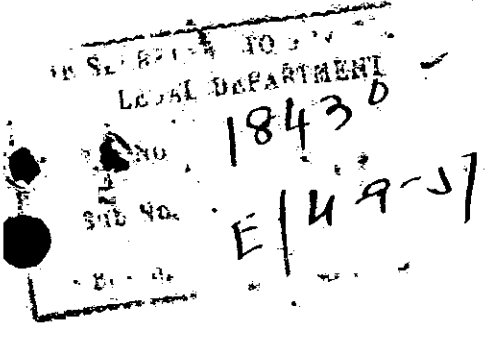
To

The Remembrancer of Legal Affairs,
Bombay.

Subject:- Bijapur Civil Suit No.967 of 1950.

Sir,

I have the honour to forward herewith an uncertified copy of the issues framed in the above suit.



Yours faithfully

Ahmad

District Govt.Pleader,Bijapur.

LD

D.G.P. forwards a copy of the issues in Cd. 100 967/50. They are all newspapers

~~DSC~~
7/9

Hon.

The D.G.P. has forwarded a copy of the issues framed in this Suit. The issues appear to be in order.

7-9.

Sec (Judl.)

7/9.

Civil Suit No. 967 of 1950. 23

Issues.

1. Whether the valuation made of the suit for purpose of court fees and the court's jurisdiction proper ? ~~Whether court fee paid for the suit deficient~~?

2. Whether the provisions of sections 5 and 7 of the Bombay Land Requisition Act 1948 are ultra vires of the Bombay Legislature and void as offending against Articles 13 and 19 of the Constitution of India ?

3. Whether the Collector made a declaration in respect of the suit premises as required by section 5(2) of the Bombay Land Requisition Act ?

4. If so, is it open to the plaintiff to prove that he was in fact residing with his family in the suit premises for six months before the date of the Collector's order in question ?

5. If so, does he prove so ?

6. Is the Collector's order illegal and void as contravening the proviso to section 5(1) of the Bombay Land Requisition Act ?

7. Whether the plaintiff represented to Government that he would let out the suit premises to them ? If so, is this suit barred by estoppel on account of that representation ?

8. Whether the suit is barred under section 17 of the Bombay Land Requisition Act ?

9. What decree ?

First issue to be tried as a preliminary issue.

" True Copy "

Dist.Govt.Pleader,
Bijapur.

24-8-1951.

Sd. M.M.Nadkarni.
Civil Judge,Sr.Dn.,Bijapur.

Suits :

Bijapur.

For declaration that the requisition order of the Collector, Bijapur, dated the 7th February 1950 is void, *ultra vires* and inoperative and for injunction directing the Government to derequisition and restore the suit property to the plaintiff.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 11789.

Bombay Castle, 24th July 1951.

Letter from the Collector of Bijapur, No. L.A.W. 203, dated the 13th January 1951—

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.
CIVIL SUIT No. 967 of 1950.

Mallapa Basappa Halkati ... ... Plaintiff;
versus
The State of Bombay ... ... Defendant.

Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

Memorandum to the District Government Pleader, Bijapur, No. 9343, dated the 14th June 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

J. R. DHURANDHAR,
Secretary to Government.

[P.T.O.

To

*The Revenue Department,

*The Collector of Bijapur,

The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

[redacted]

Issued 27/9

Subtd. after issue

File in S. Bijapur/57 (suit)

28/9

ASon

26/9

27 93

BIJAPUR CIVIL SUIT NO. 967 OF 1950.

Chronological Statement of Facts.

(1) This is a suit for a declaration that the requisition order of the Collector, Bijapur, R.Q. No. 11 dated 7th February 1950, is void, *ultra vires* and inoperative and for an injunction directing the Government to derequisition and restore the suit property to the plaintiff.

(2) In accordance with Government Letter, Revenue Department, No. 865-E/49, dated 19th March 1949, forwarded to the Collector, Bijapur, under Commissioner, Southern Division's No. E.S.T. 1797, dated 3rd April 1949, accepting in principle, the recommendation made in the Administrative Enquiry Committee's report to shift the headquarters of the Sub-Divisional officer to a centrally-situated place in his sub-division, the Head-quarters of the Sub-Divisional Officer, Bagalkot Division, Bijapur, were to be shifted to Bagalkot. As there was no Government building for this purpose, the plaintiff was requested to give his bungalow No. 210 at Bagalkot for the residence and office of the Sub-Divisional Officer, Bagalkot Division. The owner of the building, the present plaintiff, consented by his statement dated 12th September 1949 before the Prant Officer, to place the premises at the Government disposal on rent to be fixed by the Executive Engineer. Next day, the plaintiff resiled from this statement and refused to hand over the premises as agreed.

(3) On 24th September 1949, the Prant Officer submitted his report to the Collector requesting him to requisition the building. Matter was sent for inquiry and report to the Mamlatdar. It transpired in the inquiry that the plaintiff had a house in Bagalkot where he lived with his family and the bungalow was not in continuous occupation of the owner, for six months preceding the date of order.

(4) On 7th February 1950, the Collector, Bijapur, issued the order requisitioning the two storied building at Bagalkot bearing T.P. No. 210 and owned by the plaintiff for the residence and office of the Sub-Divisional Officer, Bagalkot Division, Bijapur. On 1st March 1950 the building was taken in possession by the Mamlatdar, Bagalkot.

(5) On 17th February 1950, the plaintiff presented a petition to the Government requesting the revision of the requisition order passed by the Collector, Bijapur, but the plaintiff's request was rejected on 23rd February 1950.

(6) On 31st March 1950 the plaintiff gave notice of suit under section 80, Civil Procedure Code and on 21st November 1950 he filed this suit in the Court of Civil Judge, Senior Division, Bijapur.

(7) The plaintiff contends that the provisions of the Bombay Land Requisition Act are *ultra vires* the Bombay State Legislature as they are in conflict with the fundamental rights laid down in the Constitution of India. The requisition order passed by the Collector is therefore void and *ultra vires.*

Grounds of Defence.

(1) The main contention of the plaintiff in this case is that the provisions of the Bombay Land Requisition Act, so far as they relate to the requisition of

premises, are *ultra vires* the Bombay State Legislature, in view of the fundamental rights guaranteed by the Constitution of India; the plaintiff, therefore, contends that Collector's order, dated 7th February 1950, is void and *ultra vires*. The question regarding "the *ultra vires*" character or otherwise, of the provisions of Bombay Land Requisition Act, so far as they relate to the requisitioning of the premises, has been authoritatively dealt with by a Division Bench of the Bombay High Court in *Alraj* v. *the State of Bombay*, 53 Bom. L. R. p. 355. It has been held there by their Lordships that "the provisions of the Bombay Land Requisition Act, 1948, dealing with requisition or taking possession of land or premises are not void upon the coming into force of the Constitution of India on January 26, 1950, as they are saved by Art. 31(5)(*a*) of the Constitution." In view of this ruling this contention fails. The District Government Pleader is requested to argue the case on the lines of the reasoning in 53 Bom. L. R. 355. It should therefore be contended that the Order passed by the Collector, Bijapur, on 7th February 1950, requisitioning the suit premises under section 5(*1*) of the Bombay Land Requisition Act, 1948, is legal and *intra vires*. It should also be contended that the provisions of the said Act dealing with requisition of land are not *ultra vires* or void on coming into force, the Constitution of India.

(2) The second contention of the plaintiff is that the order of the Collector, dealing with the non-residence of the plaintiff in suit premises is one sided and wrong. On this ground also, he challenges the Order of Requisition. The plaintiff seems to be ignorant of the provision of section 5, Bombay Land Requisition Act. Section 5, sub-clause (2) provides that the declaration made by the State Government shall be conclusive evidence that the owner has not resided in the premises for a continuous period of six months preceding the date of order. It can be seen from the papers, that requisite inquiry was made by the Mamlatdar; that the Prant Officer also verified it. Lastly the Collector, Bijapur, in his personal visit to the place, made an inquiry and verified the information. Besides, the plaintiff himself, in his statement before the Prant Officer was prepared to let out these premises to the Government. Had he been actually in occupation, he would not have shown his willingness to let out his bungalow immediately. Besides section 5(*2*) invests Government with discretion in the matter of inquiry. In view of section 5(*2*) of the Bombay Land Requisition Act. the plaintiff is estopped from raising a contention of this type. The contention is without substance.

(3) Lastly, under section 17, Bombay Land Requisition Act, no suit can be filed against Government in respect of the Requisition Order. This section creates a statutory bar. Unless the plaintiff shows *mala fides*, the plaintiff cannot maintain a Civil Suit for cancellation of the Requisition Order. It should be contended that the requisition of the premises was made for a public as well as State purpose after sufficient inquiry. The order is therefore legal and valid.

(4) It may be denied that the Bombay Land Requisition Act, 1948, was *ultra vires* the Bombay Provincial Legislature. The reported case in 53 Bom. L. R. p. 355 was decided on the distinct assumption that the legislature that passed the said Act had

legislative competence. But the plaintiff in this case, may try to dispute this very assumption. Section 104 of the Government of India Act, 1935, authorises the Governor General to empower by public notification, any Provincial Legislature to enact a law with respect to any matter not enumerated in any of the lists in the Seventh Schedule thereto. In the present case, the Governor-General has, by the Government of India, Ministry of Law, Notification No. F. 311/47-C, dated 21st October 1947, empowered all Provincial legislatures to enact laws with respect to the requisition of land. When the Bombay Land Requisition Bill, 1948, passed the third stage in both chambers of Provincial Legislature, it was presented to the Governor for assent. The Governor, instead of assenting, reserved the Bill for consideration of the Governor General under section 107(2) of the Government of India Act, 1935. Thus it became law. The validity of the enactment cannot be therefore challenged on the ground of want of legislative competency or on any other ground.

(5) It should also be contended that the order dated 7th February 1950, being an administrative one, could not be challenged by civil suit. In *Bhiwandiwalla* v. *Collector of Nasik,* 53 Bom. L. R. p. 369, it was held by the Bombay High Court, following the decision of the Supreme Court in *Province of Bombay* v. *Khushaldas Advani,* 53 Bom. L. R. P. I. S. C. that an order made under section 5(1) of the Bombay Land Requisition Act is an administrative order. The plaintiff cannot therefore challenge it by a suit.

(6) Pursuant to the order of Requisition, the possession of the suit property was taken over by the Mamlatdar. The plaintiff seeks, in this suit, restoration of possession of the suit property. The valuation of claim in the plaint for the purpose of court fee and jurisdiction is stated to be Rs. 5. This valuation is obviously wrong. The valuation for both purposes, must be the market price of the suit property. Unless the plaintiff corrects the valuation and pays the deficit court fee his suit will have to be dismissed. On proper amendment the suit will have to be renumbered as a special suit as the value of the house is more than Rs. 10,000.

For these reasons, it should be urged that the suit fails and should be dismissed with costs.

No. 890 of 1951.

Date:- 12-11-1951.

31/37

L. D. To 15 NOV 1951 E

1-30 /

The Remembrancer of Legal Affiars;
Bombay.

Subject:- Bijapur Civil Suit No. 967 of 1950.

1. Mallappa Halkati.
vs.
1. The State of Bombay.

Sir,

The issue in the above suit namely "whether the valuation made of the above suit for the purpose of Court-fees and the Court's Jurisdiction is proper" was heard by the Court and was found in the negative by the Court. The Court thus has passed an order directing the plaintiff to amend the valuation of the suit for purposes of Court-fees and the Court's jurisdiction as indicated in the order and to pay the necessary Court-fee thereon.

The suit is now fixed on 15-11-1951 for amendment of the plaint and ~~of~~ for payment of Court-fee.

PC 15/11 4-15 pm

Yours faithfully,

District Government Pleader,
Bijapur.

...AY TO GOVERNMENT
...GAL DEPARTMENT
File No. 23566
Sub No. 15/11/51
E

Sujeto for información

PVC
15/11

A Solr

Lic
15.11

Fite cia Bijafmi 3/51

PVC
17/11.

A Solr

Lic
17.11.

3/51

No. 925 of 1951.
15-11-1951.

33

To

The Collector of Bijapur.

Subject:- Bijapur Civil Suit No. 967 of 1950.

1. Mallappa Halkati of Bagalkot. ... Plff.

Vs.

1. The State of Bombay. ... Deft.

Sir,

The above suit was heard and the plaintiff had been directed to amend the plaint and to pay the requisite Court-fees. The plaintiff failed to do so. The Court thus passed the following order on 15-11-1951.

" The plaintiff has not amended the valuation of the suit claim and paid the necessary Court-fees as ordered above. The plaint is therefore rejected under Order VII Rule 11 of the Civil Procedure Code. The plaintiff to pay defendant's costs and bear his own".

SECRETARIAT
LEGAL DEPARTMENT
File No. 23959
Sub-No. 21/11/51
Branch

2. The two files received from the Remembrancer of Legal Affairs are sent to you herewith.

Yours faithfully,

Sd/- A.C.Angadi.
Dist.Government pleader,
Bijapur.

L.D.
22 NOV 1951

No. 926 of 1951.
16-11-1951.

Copy respectfully forwarded to the Remembrancer of Legal Affairs, Bombay, for favour of perusal.

Dist.Government pleader,
Bijapur.

Subject to information
Result may be recorded after
Copies of proceedings are read.
All then it may be filed in Bij. 3/51

AC
23/11
A. Sobo

[illegible]
23/11

3/5

Letter.

To

3s 41

No. LAW.203.
Bijapur, 5-6-1952.

The Remembrancer of Legal Affairs,
Bombay.

L. D.
7 JUN 1952

Sub : Bijapur Civil Appeal No. 456/51.
Shri Mallappa Basappa Malkatti
of Saptsot ... ... Appellant.
Vs.
The State of Bombay.

Ref : G.R.L.D. No. 11789 dated 24-7-1951.

....

The District Government Pleader, Bijapur in his letter No. 432 dated 28-5-52 (copy enclosed) reports that the appellant has filed an appeal against the order of the Civil Judge, Sr.Dn. Bijapur and that it is necessary to oppose the said appeal. Govt. may therefore kindly be moved to accord necessary sanction for the defence of the appeal.

2. Copy of the appeal memo accompanies.

O.C. signed by Collr.

For Collector. Bijapur.

GOVERNMENT
No. 11396
10/6/52
E

37 43.

Copy of letter No. 432 dated 28-5-1952 from the D.G.P. Bijapur to the Collector, Bijapur.

Sub : Bijapur Civil Appeal No. 456 of 1951.
1. Mallappa Desappa Halakatti ., Appellant.
of Bagalkot.
-Vs.
1. The State of Bombay.

"I have the honour to state that the above appellant has preferred the above appeal against the order of the Civil Judge Sr.Division. Bijapur rejecting appellant's plaint in C.S.No.967 of 1950.

2. The notice of the appeal was served on me today. I have sent the same herewith along with a copy of the memo of appeal.

3. For reasons stated in the lines of brief in respect of Bijapur Civil Suit No.967 of 1950 and for reasons appearing in the order of the Civil Judge, Sr.Dn. I am of opinion that the appeal should be opposed. I therefore request you to move Government to sanction the defence of the appeal.

The date for the return of service of notice is 12-6-1952."

Presented on 27-12-1951.

45 39

Sd/-M.K.Deshpande.Civil Appeal No. 456 of 1951. Ex.1.
C.O.C.
In the Court of the District Judge,Bijapur.

1. Mallappa Basappa Halkati, Lingayat,
age 42, occupation trade and agriculture,
residence Bagalkot, Taluka Bijapur. Appellant
(Original
plff).

Vs.

1. The State of Bombay. ....Respondent
(Original deft).

Claim Rs 205/-
Do for jurisdiction Rs 205/-.

Being aggrieved by the order rejecting the plaint under Order 7 rule 11 of the Civil Procedure Code, passed by the learned Civil Judge, Senior Division,Bijapur, in Civil Suit No 967 of 1950 on 15-11-1951, the above-mentioned appellant begs to prefer an appeal against the same on the following amoung other grounds:-

(1) The lower Court erred in holding that the plff had not paid proper court-fee on the plaint.

(2) The lower Court erred in holding that the suit for injunction as framed was not maintainable.

(3) The lower court ought to have held the suit as maintainable in view of section 9 of the Bombay Land Requisition Act.

(4) The lower Court arred in holding that the provisions of section 9 of the Land Requisition Act apply only when there is a legal and valid order under section 5 of the Act.

5. The lower Court ought to have held that in any case a suit for a mere declaration was maintainable and that section 42 of the Specific Relief Act was no bar to the suit.

6. The lower Court erred in holding that the plaint was framed with a device to pay proper court-fee.

7. The lower Court erred in holding that the relief prayed for was one for possession.

8. The order of the lower Court is contrary to law and equity.

On these grounds, it is prayed that the order of the

lower Court be reversed and the suit be remanded for trial on merits.

Bijapur.
27-12-1951.

Sd/- A.B.Kankanwadi.
Pleader for the appellant.

N.B. The undersigned appeared for the appellant in the lower Court. The Vakalatnama still holds good. So no fresh Vakalatnama is necessary.

Sd/- A.B.Kankanwadi.
Pleader.

27-12-1951.

Particulars to be entered in the register of Regular Civil appeals.

28-12-1951.

Sd/- M.K.Deshapande.
Clerk of the Court.

Order.

Fix for admission.

Sd/- N.S.Shrikhande.
Dist.Judge,Bijapur.
28-12-1951.

Order.

Admit Notice - early hearing.No paper book necessary.

2-4-1952.

Sd/- N.S.Shrikhande.
Dist.Judge.

True copy.
Abhiyat
Dist.Govt.Pleader,Bijapur.

No. 9994 47 41

Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 14th June 1952.

Subject:- Civil Suit No. 967 of 1950.

MEMORANDUM.

With reference to his letter No. 925, dated the 15th November 1951 on the above subject addressed to the Collector, the District Government Pleader, Bijapur is requested to furnish this office with the copy of Judgment in the above suit at an early date.

for Remembrancer of Legal Affairs.

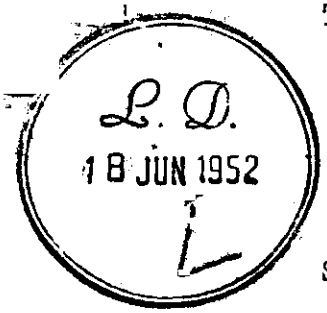
To

The District Government Pleader,
Bijapur.

BM. 11.6.

43 44

No. 513 of 1952.
Office of the D.G.P.Bijapur.
16th June 1952.



To

The Remembrancer of Legal Affairs, Bombay.

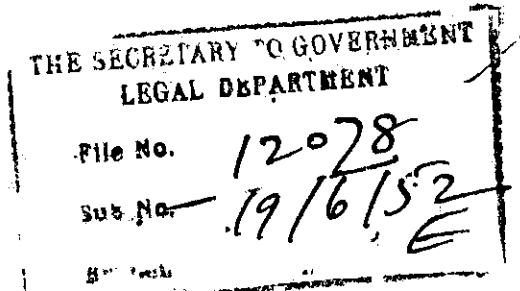
Subject:- Bijapur Civil Appeal No. 456 of 1951 against ~~ex~~ the order rejecting the plaint in Bijapur Suit No. 967 of 1950.

Sir,

With reference to your Memorandum No. 9094 of 14-6-1952 I have the honour to forward herewith the copy of Judgment in the above suit.

Yours faithfully,

Dist.Govt.Pleader, Bijapur.



45 = 51

Presented on 21-11-1950.

Civil Suit No. 967 of 1950.

In the Court of the Civil Judge, Sr.Dn.Bijapur.

1. Mallappa Basappa Halkati, Lingayat,
age 40, occupation trader and agriculture,
residence Bagalkot, District Bijapur. ... Plff.

Vs.

1: The State of Bombay. .... Deft.

Claim Rs 205/-.
Do for jurisdiction Rs 205/-.

Order below Ex.1:-

The plff's case is that under the provisions of the Bombay Land Requisition Act (No.XXXIII of 1948) the Collector of Bijapur made an order dated 7-2-1950 requisitioning the suit premises for the use of the office and residence of the Assistant Collector, that the order is illegal, void and ultra vires, and that in pursuance of that order the Government took possession of the suit premises from him by show of force on 1-3-1950. The plff prays for two reliefs namely :- (1) a declaration that the Collector's said order dated 7-2-1950 is void and ultra vires, and (2) an injunction directing the Government to release the suit premises from the requisition and restore them to him in the same condition in which they were taken from him. For the purposes of both court fees and the court's jurisdiction the plff has valued the relief of declaration at Rs 200/-, and the relief of injunction at Rs 5/- and he has paid the proper court fee on such valuation.

2. By the written statement Ex. 12 the defendant resists this suit on various grounds one of which is that the plff seeks in this suit restoration of possession of the suit premises, and that, therefore, he must value that relief for purposes of the court fees and the court's jurisdiction at the market value of the suit premises, and pay necessary court fee on such valuation.

3. Issues have been framed in this suit at Ex. 14. The first of those issues which is heard as a preliminary issue is as follows:-

(1) Whether the valuation made of the suit for the

purpose of court fees and the court's jurisdiction is proper ?

4. I answer the above issue in the negative for the following reasons:-

5. Section 5 of the Bombay Land Requisition Act 1948 authorises the Government to requisition any land or premises for any purpose by an order in writing, if in its opinion it is necessary or expedient to do so. Section 9 of the Act provides that the Government may at any time release from requisition any premises requisitioned; and that upon such release the premises shall be restored as far as possible in the same condition in which they were on the date on which the Government was put in possession thereof. The wording of the prayer for the relief of injunction in the plaint bears similarity to that of section 9. It may perhaps appear at first sight to be possible to interpret that prayer in the plaint as one for an order under section 45 of the Specifix Relief Act requiring the Govt. to release the suit premises from requisition and restore their possession to the plff in accordance with the provisions of section 9 of the Bombay Land Requisition Act. But such interpretation is not possible for three reasons. Firstly, premises requisitioned can be released from requisition under Section 9 of the Bombay Land Requisition Act, only if the requisition made thereof was legal and valid. The plff's case in this suit is that the requisition made by the Collector of the suit premises was illegal, void and ultra vires. If the requisition was void and ultra vires, no question can arise of releasing the premises from such requisition. Secondly, under section 45 of the Specific Relief Act it is only the High Courts at Calcutta, Madras and Bombay that have jurisdiction to make an order requiring any specific act to be done by any person holding a public office. This Court has no jurisdiction to make any such order under section 45 of the Specific Relief Act. Lastly, clause (f) of that Section makes it clear that no order binding on the Government can be made under that section. This suit is brought against the Government, and not against the Collector who made the order requisitioning the suit premises.

47 — 53

No order can be made under Section 45 of the Specific Relief Act requiring the Government to release the suit premises from requisition. For all these reasons the plff's learned pleader seems to have desisted from suggesting that this is a suit for an order under Section 45 of the Specific Relief Act. He was wise in desisting from making the suggestion. If, then, the prayer in the plaint for an injunction directing the Government to release the suit premises from requisition and restore their possession to the plff, is not one for an order under Section 45 of the Specific Relief Act, for what other relief is it ? The Government has taken possession of the suit premises from the plff in pursuance of the order of requisition which is complained against. The reasl relief which the plff wants is that of restoration or recovery of possession of the premises from the Government. The plff is in a position to seek that relief in this suit. In this case he seeks a declaration that the Collector's order of requisition dated 7-2-1950 is void and ultra vires. Under Section 42 of the Specific Relief Act he would not be entitled to such a declaration unless he also seeks the further relief of recovery of possession of the suit premises from the Government, as he is able to seek such further relief in this suit. Hence, as the learned Govt pleader urges the relief sought in the plaint of an injunction to direct the Govt to release the suit premises from requisition and restore their possession to the plff, can only be one of recovery of possession falling under section 7(v)(e) of the Court Fees Act. The plff has valued it at Rs 5/- for the purposes of both court fees and the Court's jurisdiction, as if it falls under section 7(iv)(d) of the Court Fees Act. In "Deokali Koer vs. Kedar Nath" (Indian Law Reports 39 Calcutta 704) at pages 707 and 708, it is observed as follows:-

> ' It is a common fashion to attempt an evasion of court fees by casting the prayers of the

plaint into a declaratory shape. Where the evasion is successful it cannot be touched, but the device does not merit encouragement or favour".

I, therefore, hold that the relief sought in the form of an injunction in this suit is really one for recovery of possession of the suit premises, and must be valued at the amount of their market value for purposes of both court fees and the court's jurisdiction, and that court fee must be paid on such valuation.

6. The next question that arises for consideration is whether if this suit is treated as one for recovery of possession of the suit premises, it is necessary for the plff to seek the declaration sought by him and pay separate court fee therefor. As the plff's case is that the collector's order of requisition dated 7-2-1950 is ultra vires and void ab initio, it seems that it is not necessary for him to seek a separate relief of declaration to that effect if he seeks the principal remedy of recovery of possession of the suit premises. In"Haman Vinayak Paranjpe vs. Narayan Hari" (48 Bombay Law Reporter 193) it is laid down that the Court should ascertain the real nature of the relief sought, irrespective of the form in which the prayer or prayers for relief are framed; and that the claim for a declaration as to the plff's title etc cannot be treated as a claim really necessitated by the nature of the suit if the principal remedy sought by him be recovery of possession. I, therefore, hold that it is not necessary for the plff in this suit to value the relief of declaration separately and pay any separate court fee for the same, if he values the relief of recovery of possession properly and pays the proper court fee therefor.

7-. Order.

Within ten days from to-day the plff shall amend the valuation of the suit for purposes of court fees and the court's jurisdiction as indicated above and pay the necessary court fee thereon.

Sd/- M.M.Nadakarni.

November 5, 1951.

Civil Judge,Sr.Dn.
5-11-1951.

49 55

The plff has not amended the valuation of the suit claim and paid necessary court-fees as ordered above. The plaint is therefore rejected under Order 7 rule 11 of the Civil Procedure Code.

The plff to pay the deft's costs and bear his own.

15-11-1951.

Sd/- M.M.Nadakarni.
Civil Judge,S.D.
15-11-1951.

True copy:
Ahmedabad
Asst. Govt. Pleader
Bijapur.

No. 15692/E

Suits:
Bijapur.
For declaration that the requisition order of the Collector, Bijapur, dated the 7th February 1950 is void, ultra vires and inoperative and for injunction directing the Government to derequisition and restore the suit property to the plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 15692/E
Bombay Castle, 23rd September 1952.

Read Government Resolution, Legal Department No. 11789, dated 24th July 1951.

Letter from the District Government Pleader, Bijapur

In the Court of the Civil Judge (Senior Division), Bijapur.	No. 925,
Civil Suit No. 967 of 1950.	dated the 15th November 1951,
Mallapa Basappa Halkati ... Plaintiff;	stating that
Vs.	the suit noted
The State of Bombay. ... Defendant.	in the margin

was decided by the Civil Judge, Senior Division, Bijapur, on 15th November 1951, when the following order was passed:-

" The plaintiff has not amended the valuation of the suit claim and paid necessary court-fees as ordered above. The plaint is therefore rejected under Order 7 rule 11 of the Civil Procedure Code.

The plaintiff to pay the defendant's costs and bear his own. "

Letter from the Collector of Bijapur No. LAW 203, dated the 5th June 1952 stating that the plaintiff in the suit noted in the margin has filed an appeal No. 456 of 1951 and requesting sanction to its defence.

RESOLUTION : (i) The result of the suit is recorded.

(ii) Sanction is accorded to the defence of the Civil appeal No. 456 of 1951 in the Court of the District Judge, Bijapur on the lines of the brief accompanying Government Resolution, Legal Department No. 11789 dated the 24th July 1952.

By order of the Governor of Bombay,

Original (R.T. Katarki)
Deputy Secretary to Government.

P.T.O.

5A

To

The Revenue Department,

The Collector of Bijapur,

The District Government Pleader, Bijapur.

File in S. Bijapur 3/51

AB
24.9.52

No. 9 of 1952 53 57

Date:-

From

Shri A.C.Angadi,B.A.LL.B.,
Dist.Govt.Pleader,Bijapur.

To

The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur Civil Appeal No.456/1951.
1. Mallappa Basappa Halkatti.
Vs.
1. The State of Bombay.

Sir,

The above appeal was heared and was dismissed with costs.

Yours faithfully

Ahirad

District Govt.Pleader,Bijapur.

5 JAN 1953

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 265
Sub - 6/1/53
E

L.D.

Submitted

Pl. see D.S.P.'s letter overleaf.

C.A. No. 456/57 has been decided in favour of Govt. The result may be recorded by issue of G.R. after the receipt of the copies of judgment & decree. Bill thereafter may be filed in S. Bijapur 3/57

Jhw
6/11

Sol (Ad) 7/11

S. Bij 3/57
6/11/57

3/57

No. 185 of 1953. 5564
Date:- 29-1-1953

To

The Remembrancer of Legal Affairs,
Bombay No.1.

Subject:- Bijapur Civil Appeal No.456/1951.
1. Mallappa Basappa Halkatti.appellant
Vs.
1. The State of Bombay. respondent.

LEGAL DEPARTMENT
2 FEB 1953

Sir,

In continuation of this office No.9 of 13-1-1953 I have the honour to forward herewith an uncertified copy of the juggment in the above appeal.

Yours faithfully
Abusade
Dist.Govt.Pleader,Bijapur.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
File No. 2764
Dt. 3/2/53
E

Submitted
C.A. No 456/51 has been decided in favour of Govt. Result may be recorded by issue of G.R.
The
3/2
Sol(M) 4/2

5763

IN THE COURT OF THE EXTRA ASSISTANT JUDGE

AT BIJAPUR.

Civil Appeal No. 456 of 1951 from order in Civil Suit No. 967 of 1950 of the Court of the Civil Judge (Senior Division) of Bijapur (Shri M.M.Nadkarni).

Shri A.B.Kankanwadi.

1. Mallappa Basappa Halkati of Bagalkot, taluka District Bijapur. — appellant-plff.

Vs.

Shri A.C.Angadi, Govt.Pleader.

1. The State of Bombay. — Respondent-deft.

Claim 205/-
-do- for juridiction Rs. 205/-.

This is an appeal by the Plaintiff against the order passed by the learned Civil Judge(Senior Division) Bijapur rejecting the plaint in Bijapur Civil Suit No.967 of 1950 under Order 7 Rule 11 of the Civil Procedure Code.

2. The facts giving rise to the suit are shortly these:- The plff is the owner of the bungalow and was in occupation of the premises situated in C.T.S.N.P. No.210 of Bagalkot. The Collector of Bijapur purporting to act under sectior 5(1) of the Bombay Land Requisition Act (Act 33 of 1948), made an order on 7-2-1950 requisitioning the premises. It is not disputed that in pursuance of the said order possession has been taken before this suit. Consequently the plaintiff has filed the present suit. The prayers in the plaint made by the plaintiff are as follows:-

"(1) It should be declared that the requisition order of the Collector R.Q.No.11 dated 7-2-1950 is void, ultra vires and inoperative for reasons shown in paras 2 to 4 of the plaint and.

(2) An injunction be issued against the defendant and its officers directing it to release the suit property from requisition and restore it to

the plaintiff in the same condition in which it was taken from him on 1-3-1950".

For the purposes of court fees and the Court's jurisdiction the plaintiff has valued the relief of declaration at Rs.200/- and the relief of injunction at Rs.5 and has paid the court fees on such valuation. In para 7(b) of the plaint dealing with valuation, the nature of the injunction is described thus:-

> " Permanent injunction against the defendant restraining the defendant and its officers directing it to release the suit property from requisition and restore it to the plaintiff in the same condition in which it was taken from them on 1-3-1950. ..... Rs.5-0-0"

3. Issues were framed by the learned trial Judge at Exh.14. The following issues were tried as preliminary issue:-

> " Whether the valuation made of the suit for the purposes of court fees and the Court's jurisdiction is proper ?".

The learned trial Judge held that although the relief sought was cast in the form of an injunction, the relief sought in the suit in substance was one for possession. On November 5, 1951, he therefore, directed the plaintiff to amend the valuation of the suit for the purposes of the court fees and the court's jurisdiction according to the market value of the suit property and pay the court fees thereon within ten days from the dateof the order. The plaintiff having failed to comply with that order, the learned trial Judge rejected the plaint under Order 7 rule 11 of the Civil Procedure Code.

4. Aggrieved by the above decision the plaintiff has come up in appeal.

5. The only point for decision in the appeal is whether the order passed by the learned trial judge is wrong.

59 65

6. My finding is in the negative.

REASONS.

7. Admittedly the plaintiff is out of possession It was not disputed before me by the learned pleaderfor the appellant during the course of arguments, that for the relief of possessior, he would have to pay advaloru court fees on the market value of the suit house under section 7(v) of the Court fees Act. It is admitted that suit for possession cannot be brought under any other provision. Instad of asking for possesion, the plaintiff has sought to cast his prayer for the purpose of court fees in a circum locutous manner in the form of a permanent injunction, which it is difficult to under--stand. The suit is filed against the State of Bombay. If the plaintiff wants a writ of mandamus under section 45 of the Specific Relief Act, he cannot ask for such a writ against the State of Bombay, as under section 45(f of the Act, no such writ can be issued against the Stat The learned pleader for the appellant argued before me that it is provided under section 9 of the Bombay Land Requisition Act that the State Government may, at any time, release from requisition any land requisitioned an upon such release the land has to be restored to the possession of the person from whom it was requisitioned But that power is vested in the Government and if the plaintiff wants to invoke those powers, he should make move the Government. The Courts in the mofussil have no power to pass any order under section 45 of the Specific Relief Act even against any officers and it is only the High Courts at Calcutta, Madras and Bombay that have jurisdiction to make such orders. It appears to me that it is to get over this difficulty that in the para dealing with valuation, the plaintiff has tried to cast the prayer for injunction in the form of a prohibitory injunction directing any one to deliver possession. As I have said above, the relief

one fails to see how there can be prohibitory injunctions

which the plaintiff wants in substance in this suit is one for possession and the payment of proper court fee is sought to be evaded by trying to cast the prayer in the form of an impossible injunction.In the case of " Deokali Koer Vs.Kedar Nath"(I.L.R.39 Calcutta page 704) dealing with such attemtps Sir Lawrence Jenkins C.J.observed as follows:-

> " It is a common fashinn to attempt an evasion of court-fees by casting the prayers of the plaint into a declaratory shape.Where the evasion is successful it cannot be touched, but the device does not merit encouragement or favour".

8. The learned pleader for the appellant then argued that even if his second prayer goes away, his first prayer for a declaration that theorder passed by the Collector is ultra vires and void remains,Now if this declaration comes within the purview of section 42 of the Specific Relief Act, it would be necessary for the plaintiff, as required by the proviso to that section to pnay for the consequential relief, which in this case is one for possession.To get over this difficulty the learned pleader for the appellant contended that the declaration he prays for does not fall under section 42 of the Specific Relief Act at all. Now if the second prayer in this suit is to be ignored, it is obvious that the suit would be for a merely declaratory decree.In the case in 39 Calcutta referred to above,Sir Lawrence Jenkins C.J. has pointed out that the law as to merely declaratory decrees is now to be found only in section 42 of the Specific Relief Act and then His Lordship observes thus(page 709):-

> " It is the disregard of this that accounts for the multiform and, at times, eccentric declarations which find a place in Indian plaints".

In the same case it has been point d out that it is tnnn that very often declarati ns are embodied in decree as introductory to other reliefs and such declarations rested on long established practice. Dealing with this question His Lordship observes as follows (Page 710):-

> " I would only add this that the limit imposed by section 42 is on decrees which are merely declaratory, and does not expressly extend to decrees in wnich relief is administered, and declarations are embodied as introductory to that relief. For such declarations legislative sanction is not required; they rest nn - established practise. But for all that the Court sho ıld be circumspect and even chary as to the declarations it makes: it is ordinarily enough that relief should be granted wit out the declaration."

In the case of " Bai Shri Vaktuba Vs. Thakore Agarsingbai Raisinghji " (I.L.R. 34 Bombay Page 676) it has been observed as follows (P. 680):-

> " It has long been established that the general power vested in the Courts in India under the Civil Procedure Code to entertain all suits of Civil nature excepting suits of which the congnizance is barred by any enactment for the time being in force does not carry with it hhe general power of making declarations exceptin so far as such power is expressly conferred by xxxxx statute".

Such power is conferred only by section 42 of the Specific Relief Act. The law on this point is stated in Mulla's commentary under sectinn 42 of the Specific Relief Act (Seventh Edition) thus (Page 748):-

" The correct view, it is submitted, is that Section 42 is exhaustive of the cases in which which a decree merely declaratory can be made, and that the Courts have no power to make such a decree independently of that section "..

9. As the learned trial Judge has pointed out in this case, since it was the case of the plaintiff that the Collecotr's order was ultra vires and vide ab-initio it is not necessary for the plaintiff to seek a separate relief for a declaration to that effect and it is not necessary for him to pay separate court fees thereon, and it is sufficient if he pays proper Court fees on the relief which he seeks in substance in the suit, namely, the relief of possession. In the case of " Waman Vinayak Paranjpe Vs. Narayan Hari " (48 Bombay Law Reporter Page 193) it has been pointed out that it is necessary for the Court to ascertain the real nature of the relief sought irrespective of the form in which the prayer or prayers for the relief are framed. In that case the plaintiff has sued for two declarations, namely, (1) that a sale deed of the suit property executed in 1912 was illegal and not binding on the plaintiff and (2) that he was the owner of the property. The plaintiff further prayed for redemption and possession. He paid the Court fee on Rs. 2000/- on the reliefof the redemption as mentioned in the sale deed and treated the claim for possession as consequential to the declaration sought by him. It was held the real nature of the relief sought was a decree for possession and that, therefore, the provisions of section 7(v) of the Court fee Act were applicable for the purpose of Court fees. I entirely agree with the learned trial Judge that the real relief which the plaintiff seeks in this suit is one of possession. The plaintiff having failed to value the suit property for the purpose of Court fees and Court's jurisdiction as directed by the trial Court, the suit was properly dismissed under Order 7 rule 11 of theCivil Procedure Code.

10. The appeal, therefore, fails and has to be dismissed with costs.

Order.

Appeal dismissed with costs.

December 31, 1952 Sd. S.R.Joshi.

Extra Assistant Judge.

"True Copy"

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71

No. 273 of 1953.
Date:- 18-2-53

To

The Remembrancer of Legal Affairs,
Bombay No. 1.

Subject:- Bijapur R.A.No.456/1951.
1.Mallappa Basappa Halakatti.appellant
Vs.
1. The State of Bombay. respondent.

Sir,

LEGAL DEPARTMENT
19 FEB 1953

I have the honour to forward herewith an uncertified copy of the Decree in the above appeal.

Yours faithfully

Abusad

Dist.Govt.Pleader,Bijapur.

E

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2522—13,000—6-49 – R(a)*

Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ
ಹುಕುಮುನಾಮೆಯು
(ಆರ್ಡರ ೪೧, ರೂ. ೩೫).

(ಫಾರ್ಮ ನಂಬರು ೯,
ಪರಿಶಿಷ್ಟಪಗ, ಶಿಡ್ಯೂಲ್ ೧)

ಹುಕುಮನಾಮೆಯು

———

———— ಇಲ್ಲಿಯ ————— ಕೋರ್ಟ ನಲ್ಲಿ.

ಮುಕ್ಕಾಮು ———— ಇಲ್ಲಿ. ನಿ।।

RA ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು 456 ೧೯೪೧ ನೇ ಸೈಕೆ

(೧) ———— } ಅಪೀಲಂಟ (ಮೊದಲನೇ ———)

ವಿರುದ್ಧ

(೧) ———— } ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ———)

———— ಇಲ್ಲಿಯ ———— ಸೀನಿಯರ್ ಸಬ್-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೦ ನೇ ಇಸವಿಯ ———— ನಂಬರು ೬೭ ನೇದರಲ್ಲಿ ತಾರೀಖು ೨೫ನೇ ——— ೧೧ ತಿಂಗಳ ಸನ್ ೧೯೪೧ ನೇ ಇಸವಿಯ ಹುಕುಮು ———— ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣದರಲ್ಲಿ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಹೇಳಿದ ———— ಇವನು.

ನಾವಾರಿ ತಾರೀಖಿನ ಹುಕುಮು ———— ಮೇಲೆ ———— ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ ಜಜ್ಜ ———— ———— ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೨ ನೇ ತಿಂಗಳಿನ ೨೧ ತಾರೀಖಿನ ದಿವಸ ———— ನ ಮುಂದೆ, ಅಪೀಲಂಟನ ತರ್ಫನಿಂದ ———— ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫನಿಂದ ———— ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದದ್ದರ ಮೇಲಿಂದ ಹೀಗೆ ಹುಕುಮು ಮಾಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ—

———— ಅಪೀಲು ಖರ್ಚು ವಿಷಯ ತೆಗೆದು ಹಾಕಲ್ಪಟ್ಟಿದೆ.

71 — 77

Suits:
Bijapur.
For declaration that the requisition order of the Collector, Bijapur, dated the 7th February 1950 is void, ultra vires and inoperative and for injunction directing the Government to derequisition and restore the suit property to the plaintiff.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 100 77/12
Bombay Castle, 29th April 1953.

Read G.R.L.D. No.15692/E dated the 23rd September 1952.

Letter from the District Government Pleader, Bijapur No. 9, dated the 3rd January 1953 stating that the Civil appeal No. 456 of 1951 in the suit noted in the margin was decided by the Extra Assistant Judge, Bijapur on the 31st December 1952, when the following order was passed:-

In the Court of the Civil Judge (Senior Division), Bijapur.	
Civil Suit No.967 of 1950.	
Mallapa Basappa Halkati .. Plaintiff vs. The State of Bombay ... Defendant.	

"Appeal dismissed with costs."

Letter from the District Government Pleader, Bijapur, No.185, dated the 29th January 1953, forwarding uncertified copies of the judgment and decree.

RESOLUTION:- The result of the appeal is recorded.

By order and in the name of the
Governor of Bombay,

original R.T. Katarki
R.T. Katarki,
Deputy Secretary to Government.

Secn Cs 29/4

To
The Revenue Department,
The Collector of Bijapur,
The District Government Pleader, Bijapur.

RMS.
29.4.

Submitted for separation
Shw
29/4

Supdt NB 29.4.53
D.S (Civil)

~~78~~ 22

Submitted after issue
File in S. Bijapur 3/57

Dhu
30/4

Supdt. NB
30.4.53

S. Bij 3/57
11/5/53

67 — 75

ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು ಮೂಲದಾವೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು

ಅಪೀಲಿನ ವೆಚ್ಚವು

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ.		ರೂ.	ಆ.	ಪೈ.
೧. ಅಪೀಲಿನಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟ್ಯಾಂಪು....	19	4	—	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....			
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ ...	—	—	—	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ			
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	2	—	—	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ			
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	—	15	—	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	15	—	—	೫. ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ ...	15	0	0
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ ಸ್ಟ್ಯಾಂಪ್....	14	—	—	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ			
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ				೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು			
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ			
ಒಟ್ಟು...	49	3	0	ಒಟ್ಟು...	15	0	0

ಈ ಹೊತ್ತು ತಾರೀಖು 31 ತಿಂಗಳು ಅಕ್ಟೋಬರ್ ಸನ್ 1924 ನೇ ಇಸವಿಯ ದಿನ ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು, ಸಮನಾಗಿ ಇದೆ.

Sd/- P.A.Badkode
ಕಾರಕೂನ.

Sd/- S.R.Joshi
ಹೆಚ್ಚಿನ ಸಬ್ ಜಡ್ಜ್
ಧಾರವಾಡ
9-11-1923.

Sd/- A.B.Kankanwadi
ಅಪೀಲೆಂಟ ವಕೀಲ.

Sd/- A.S.Inamdar
ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ಮೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವದಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳು ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲಿಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.]

True Copy

Asst. Govt. Pleader
Dharwar